

## Exclusion and Evacuation

With the signing of Executive Order 9066, the course of the President and the War Department was set. American citizens of Japanese ancestry would be required to move from the West Coast on the basis of wartime military necessity, and the way was open to move any other group the military thought necessary. For the War Department and the Western Defense Command (WDC), the problem now became primarily one of method and operation, not basic policy. General DeWitt first tried "voluntary" resettlement: the Issei and Nisei were to move outside restricted military zones on the West Coast but were free to go wherever they chose. From a military standpoint, this policy was bizarre and utterly impractical besides. If the Issei and Nisei were being excluded because they threatened sabotage and espionage, it is difficult to understand why they would be left at large in the interior where there were, of course, innumerable dams, power lines, bridges and war industries to be spied upon or disrupted. For that matter, sabotage in the interior could be synchronized with a Japanese raid or invasion for a powerful fifth column effect. If this was of little concern to General DeWitt once the perceived problem was removed beyond the boundaries of his command, it raises substantial doubts about how gravely the War Department regarded the threat. The implications were not lost on the citizens and politicians of the interior western states; they believed that people who were a threat to wartime security in California were equally dangerous in Wyoming and Idaho.



For the Issei and Nisei, "voluntary" relocation was largely impractical. Quick sale of a going business or a farm with crops in the ground could not be expected at a fair price. Most businesses that relied on the ethnic trade in the Little Tokyos of the West Coast could not be sold for anything close to market value. The absence of fathers and husbands in internment camps and the lack of liquidity after funds were frozen made matters more difficult. It was not easy to leave, and the prospect of a deeply hostile reception in some unknown town or city was a powerful deterrent to moving.

Inevitably the government ordered mandatory mass evacuation controlled by the Army; first to assembly centers—temporary staging areas, typically at fairgrounds and racetracks—and from there to relocation centers—bleak, barbed-wire camps in the interior. Mass evacuation went forward in one locality after another up and down the coast, on short notice, with a drill sergeant's thoroughness and lack of sentimentality. As the Executive Order required, government agencies made an effort, only partially successful, to protect the property and economic interests of the people removed to the camps; but their loss of liberty brought enormous economic losses.

Even in time of war, the President and the military departments do not make law alone. War actions must be implemented through Congress, and the courts may review orders and directions of the President about the disposition of the civilian population. Finally, in a democratic society with a free press, public opinion will be heard and weighed. In the months immediately following Executive Order 9066, none of these political estates came to the aid of the Nisei or their alien parents. The Congress promptly passed, without debate on questions of civil rights and civil liberties, a criminal statute prohibiting violation of military orders issued under the Executive Order. The district courts rejected Nisei pleas and arguments, both on habeas corpus petitions and on the review of criminal convictions for violating General DeWitt's curfew and exclusion orders. Public opinion on the West Coast and in the country at large did nothing to temper its violently anti-Japanese rage of early February. Only a handful of citizens and organizations—a few churchmen, a small part of organized labor, a few others—spoke out for the rights and interests of the Nisei.

Few in numbers, bereft of friends, probably fearful that the next outburst of war hysteria would bring mob violence and vigilantism that law enforcement officials would do little to control, left only to choose a resistance which would have proven the very disloyalty they denied—the Nisei and Issei had little alternative but to go. Each carried a



personal burden of rage or resignation or despair to the assembly centers and camps which the government had hastily built to protect 130 million Americans against 60,000 of their fellow citizens and their resident alien parents.

## CONGRESS ACTS

The Executive Order gave the military the power to issue orders; it could not impose sanctions for failure to obey them. The Administration quickly turned to Congress to obtain that authority. By February 22, the War Department was sending draft legislation to the Justice Department. General DeWitt wanted mandatory imprisonment and a felony sanction because "you have greater liberty to enforce a felony than you have to enforce a misdemeanor, *viz.* You can shoot a man to prevent the commission of a felony."<sup>1</sup> On March 9, 1942, Secretary Stimson sent the proposed legislation to Congress. The bill was introduced immediately by Senator Robert Reynolds of North Carolina, Chairman of the Senate Committee on Military Affairs, and by Representative John M. Costello of California.<sup>2</sup>

The Executive Order was what the West Coast Congressional delegation had demanded of the President and the War Department. Congressman John H. Tolan of California, who chaired the House Select Committee which examined the evacuation from prohibited military areas, characterized the order as "the recommendation in almost the same words of the Pacific coast delegation."<sup>3</sup> With such regional support and military backing, there were only two circumstances under which one might have expected Congressional opposition: if Tolan's Committee, which held hearings on the West Coast in late February, immediately after the Executive Order was signed, had returned to Washington prepared to argue against the Executive Order; or if, given the fact that there was no evidence of actual sabotage or espionage, members concerned with civil rights and civil liberties had protested.

Members of the Tolan Committee did not openly abandon support of the Executive Order after their West Coast hearings. They went out persuaded that espionage and fifth column activity by Issei and Nisei in Hawaii had been central to the success of the Japanese attack. Censorship in Hawaii meant that the only authoritative news from the islands was official. With regard to sabotage and fifth column activity,



activity, that version of events was still largely made up of two pieces: Secretary Knox's firmly-stated December views that local sabotage had substantially aided the attack, and the Roberts Commission's silence about fifth column activity.<sup>4</sup> Thus there was no effective answer to be made when Tolan challenged pro-Nisei witnesses:

We had our FBI in Honolulu, yet they had probably the greatest, the most perfect system of espionage and sabotage ever in the history of war, native-born Japanese. On the only roadway to the shipping harbor there were hundreds and hundreds of automobiles clogging the street, don't you see.<sup>5</sup>

Not privy to the facts in Hawaii, advocates of Japanese American loyalty such as the Japanese American Citizens League, were frequently reduced to arguing lamely that the mainland Nisei were different from, and more reliable than, the residents of Hawaii.<sup>6</sup> This view of Pearl Harbor goes a long way toward explaining the argument, repeated by the Congressmen, that the lack of sabotage only showed that enemy loyalists were waiting for a raid or invasion to trigger organized activity.<sup>7</sup>

The Nisei spoke in their own defense; a few academics, churchmen and labor leaders supported them.<sup>8</sup> Even much of this testimony, assuming that a mass evacuation was a *fait accompli*, addressed secondary issues such as treatment during evacuation. Traditional anti-Japanese voices such as the California Joint Immigration Committee testified firmly in favor of the Executive Order, reciting again the historical catalogue of anti-Japanese charges.<sup>9</sup>

Earl Warren, then Attorney General of California and preparing to run for governor, joined the anti-Japanese side of the argument. One of the first witnesses, Warren presented extensive views to the Committee; he candidly admitted that California had made no sabotage or espionage investigation of its own and that he had no evidence of sabotage or espionage.<sup>10</sup> In place of evidence Warren offered extensive documentation about Nikkei cultural patterns, ethnic organizations and the opinions of California law enforcement officers; his testimony was illustrated by maps vividly portraying Nikkei land ownership. This was nothing but demagoguery:

I do not mean to suggest that it should be thought that all of these Japanese who are adjacent to strategic points are knowing parties to some vast conspiracy to destroy our State by sudden and mass sabotage. Undoubtedly, the presence of many of these persons in their present locations is mere coincidence, but it would seem equally beyond doubt that the presence of others is not coinci-



dence. It would seem difficult, for example, to explain the situation in Santa Barbara County by coincidence alone.

In the northern end of that county is Camp Cook where, I am informed, the only armored division on the Pacific coast will be located. The only practical entrance to Camp Cook is on the secondary road through the town of Lompoc. The maps show this entrance is flanked with Japanese property, and it is impossible to move a single man or a piece of equipment in or out of Camp Cook without having it pass under the scrutiny of numerous Japanese. I have been informed that the destruction of the bridges along the road to Camp Cook would effectually bottle up that establishment for an indefinite time, exit to the south being impossible because of extremely high mountains and to the north because of a number of washes with vertical banks 50 to 60 feet deep. There are numerous Japanese close to these bridges.

Immediately north of Camp Cook is a stretch of open beach ideally suited for landing purposes, extending for 15 or 20 miles, on which almost the only inhabitants are Japanese.

Throughout the Santa Maria Valley and including the cities of Santa Maria and Guadalupe every utility, airfield, bridge, telephone, and power line or other facility of importance is flanked by Japanese, and they even surround the oil fields in this area. Only a few miles south, however, is the Santa Ynez Valley, an area equally as productive agriculturally as the Santa Maria Valley and with lands equally available for purchase and lease, but without any strategic installations whatever. There are no Japanese in the Santa Ynez Valley.

Similarly, along the coastal plain of Santa Barbara County from Gaviota south, the entire plain, though narrow, is subject to intensive cultivation. Yet the only Japanese in this area are located immediately adjacent to such widely separated points as the El Capitan oil field, Elwood oil field, Summerland oil field, Santa Barbara Airport, and Santa Barbara Lighthouse and Harbor entrance, and there are no Japanese on the equally attractive lands between these points.

Such a distribution of the Japanese population appears to manifest something more than coincidence. But, in any case, it is certainly evident that the Japanese population of California is, as a whole, ideally situated, with reference to points of strategic importance, to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them be inclined to do so.<sup>11</sup>

As late as February 8, Warren had advised the state personnel board that it could not bar Nisei employees on the basis that they were children of enemy alien parentage; such action was a violation of con-



stitutionally protected liberties.<sup>12</sup> This earlier stance must have given his performance before the Tolan Committee special force and effect.\*

At bottom, Warren's presentation had no probative value, and calm reflection would probably have led many to question whether people planning to blow up dams or bridges would have purchased the surrounding land rather than masking their intentions more thoroughly. But these were not weeks of calm reflection. The overpowering mass of Warren's data—maps and letters and lists from all over California—gripped the imagination and turned the discussion to fruitless argument about whether land was bought before or after a powerline or plant was built; no one focused on whether there was reason to believe that this "evidence" meant anything at all. A similar "analysis" of ethnic Italian land ownership would probably have produced an equally alarming and meaningless pattern, and, as Governor Olson testified to the Committee, there were many Italian language schools which frequently inculcated Fascist values.<sup>13</sup> Of course, no such comparison was made; even Olson's shocked revelation failed to attract the attention of the Committee. The fact that the first witness called by the Tolan Committee was Mayor Rossi of San Francisco and that a great deal of time was devoted to extolling the unquestionable Americanism of the DiMaggio brothers (although their father and mother were aliens), clearly brings home the advantages which numbers, political voices and comparative assimilation provided in 1942's hour of crisis.<sup>14</sup> Helpful, too, was the absence of an organized anti-Italian faction and the patronizing ethnic stereotype of being, as President Roosevelt remarked, nothing but a lot of opera singers.<sup>15</sup>

In late February and early March, the Tolan Committee assumed that Secretary Knox knew what he was talking about and that the President was acting on informed opinion. The views of anti-Japanese witnesses added substance and confirmed what was already known or suspected. Although the Committee was eager to see that the property

\*It was certainly persuasive with the Western Defense Command. In DeWitt's *Final Report*, much of Warren's presentation to the Tolan Committee was repeated virtually verbatim, without attribution. Warren's arguments, presented after the signing of the Executive Order, became the central justifications presented by DeWitt for issuing the Executive Order (Compare *Final Report*, pp. 9-10, to Tolan Committee, p. 10974). This quick reorganization of history does little to enhance the reputation of the Western Defense Command for candor and independent analysis, although Warren may well have presented his views to DeWitt earlier in February.



of aliens was safeguarded by the government and wanted the Army to be concerned about hardship cases in an evacuation, it returned to Washington unwilling to challenge the need for Executive Order 9066 and the evacuation. Only in reports issued over the next few months did the Committee begin to raise serious questions about the policy underlying exclusion and removal.<sup>16</sup>

There was no civil liberty opposition in Congress to making criminal any violation of the Executive Order. There were, of course, few Nisei of voting age and they had no voice in Congress. No one publicly questioned the military necessity of the action or its intrusion into the freedom of American citizens. Such debate as there was focused on the inclusive wording of the bill.

The language of the bill was loose indeed. Senator Danaher wondered how a person would know what conduct constituted a violation of the act, an essential requirement for a criminal statute.<sup>17</sup> Senator Taft spoke briefly against the bill, although he did not vote against it:

I think this is probably the "sloppiest" criminal law I have ever read or seen anywhere. I certainly think the Senate should not pass it. I do not want to object, because the purpose of it is understood. . . .

[The bill] does not say who shall prescribe the restrictions. It does not say how anyone shall know that the restrictions are applicable to that particular zone. It does not appear that there is any authority given to anyone to prescribe any restriction. . . .

I have no doubt an act of that kind would be enforced in war time. I have no doubt that in peacetime no man could ever be convicted under it, because the court would find that it was so indefinite and so uncertain that it could not be enforced under the Constitution.<sup>18</sup>

The debate was no more pointed or cogent in the House, where there seemed to be some suggestion that the bill applied to aliens rather than citizens.<sup>19</sup> The bill passed without serious objection or debate, and was signed into law by the President on March 21, 1942.<sup>20</sup>

This ratification of Executive Branch actions under Executive Order 9066 was particularly important; another independent branch of government now stood formally behind the exclusion and evacuation, and the Supreme Court gave great weight to the Congressional action in upholding the imposition of a curfew and the evacuation itself.<sup>21\*</sup>

\*The Administration also considered introducing other legislation which would have affected Japanese Americans. For example, Secretary Stimson wrote to the Director of the Bureau of Budget on February 24 about legislation



## IMPLEMENTING THE EXECUTIVE ORDER

Executive Order 9066 empowered the Secretary of War or his delegate to designate military areas to which entry of any or all persons would be barred whenever such action was deemed militarily necessary or desirable.<sup>22</sup> On February 20, 1942, Secretary Stimson wrote to General DeWitt delegating authority to implement the Executive Order within the Western Defense Command and setting forth a number of specific requests and instructions: American citizens of Japanese descent, Japanese and German aliens, and any persons suspected of being potentially dangerous were to be excluded from designated military areas; everyone of Italian descent was to be omitted from any plan of exclusion, at least for the time being, because they were "potentially less dangerous, as a whole." DeWitt was to consider redesignating the Justice Department's prohibited areas as military areas, excluding Japanese and German aliens from those areas by February 24 and excluding actually suspicious persons "as soon as practicable;" full advantage was to be taken of voluntary exodus; people were to be removed gradually to avoid unnecessary hardship and dislocation of business and industry "so far as is consistent with national safety;" accommodations were to be made before the exodus, with proper provision for housing, food, transportation and medical care. Finally, evacuation plans were to provide protection of evacuees' property.<sup>23</sup>

Over the next month DeWitt began to implement Stimson's instructions. On March 2, he issued Public Proclamation No. 1, announcing as a matter of military necessity the creation of Military Areas No. 1 and No. 2. Military Area 1 was the western half of Washington, Oregon, and California and the southern half of Arizona; all portions of those states not included in Military Area No. 1 were in Military Area No. 2. A number of zones were established as well; Zones A-1 through A-99 were primarily within Military Area No. 1; Zone B was

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to amend the Nationality Act of 1940. The proposed amendments would have permitted those who did not speak English to apply for citizenship; at the same time, it would have provided a process for cancelling citizenship for those whose conduct established allegiance to a foreign government. (Memo, Stimson to Smith, Feb. 24, 1942 [CWRIC 2809]). In effect, the legislation would have allowed naturalization of aliens from enemy countries in Europe and the cancellation of citizenship of some persons, particularly ethnic Japanese—a step never before provided, but one which the anti-Japanese faction on the West Coast had pushed in the past and would continue to urge.



the remainder of Military Area No. 1. The Proclamation further noted that in the future people might be excluded from Military Area No. 1 and from Zones A-2 to A-99, and that the designation of Military Area No. 2 did not contemplate restrictions or prohibitions except with respect to the Zones designated. The Proclamation clearly foreshadowed extensive future exclusions. It also provided that any Japanese, German, or Italian alien, and any person (citizen) of Japanese ancestry residing in Military Area No. 1 who changed his residence, was required to file a form with the post office. Finally, the Proclamation expressly continued the prohibited and restricted areas designated by the Attorney General.<sup>24</sup> A curfew regulation requiring all enemy aliens and persons of Japanese ancestry to be in their homes between 8 p.m. and 6 a.m. was added by proclamation on March 24, 1942.<sup>25</sup>

In the press statement accompanying his first public proclamation, DeWitt announced that Japanese—both aliens and citizens—would be evacuated first (suspicious persons were, of course, being apprehended daily); only after the Japanese had been excluded would German and Italian aliens be evacuated. In addition, some German and Italian aliens would be altogether exempt from evacuation.<sup>26</sup>

At this point “voluntary” resettlement outside the designated zones was contemplated; excluded people were free to go where they chose beyond the prohibited areas. “Voluntary” evacuation actually began before Executive Order 9066. Enemy aliens had been excluded from areas designated by the Department of Justice as early as December 1941, and many had moved out of the prohibited areas voluntarily. The Army had an interest in attempting to continue that system; Bendtsen noted that many aliens ordered to move after Pearl Harbor had found new places for themselves, stressing that the Army should not advertise that it would provide food and housing for those it displaced because numerous aliens might rush to take advantage of a free living. He also thought the Army should not be responsible for resettlement, since its job “is to kill Japanese not to save Japanese;” devoting resources to resettlement would make the Army’s primary task—that of winning the war—more difficult.<sup>27</sup>

In Seattle, optimism marked the voluntary evacuation program. Local FBI agents informed J. Edgar Hoover in late February that Japanese aliens were prepared to evacuate, and that the Japanese American Citizens League, through the Maryknoll Mission, was attempting to secure facilities and employment for the Seattle Japanese community—both citizens and aliens—in St. Louis, Missouri.<sup>28</sup> The Seattle Chapter of the JACL passed and published a resolution that



its members would make every effort to cooperate with the government to facilitate evacuation measures.<sup>29</sup>

More sober minds saw that the voluntary program could not work. As early as February 21, the Tolan Committee was beginning to receive complaints from areas to which the evacuees were moving;<sup>30</sup> fears of sabotage and destruction were spreading inland.<sup>31</sup> Both Earl Warren and Richard Neustadt, the regional director of the Federal Security Agency, saw that only an evacuation and relocation program run by the government could work.<sup>32</sup>

The reaction from the interior was direct and forceful. On February 21, 1942, Governor Carville of Nevada wrote to General DeWitt that permitting unsupervised enemy aliens to go to all parts of the country, particularly to Nevada, would be conducive to sabotage and subversive activities:

I have made the statement here that enemy aliens would be accepted in the State of Nevada under proper supervision. This would apply to concentration camps as well as to those who might be allowed to farm or do such other things as they could do in helping out. This is the attitude that I am going to maintain in this State and I do not desire that Nevada be made a dumping ground for enemy aliens to be going anywhere they might see fit to travel.<sup>33</sup>

Governor Ralph L. Carr of Colorado was characterized by many contemporaries as the one mountain state governor receptive to relocation of the Issei and Nisei in his state.<sup>34</sup> His radio address of February 28, 1942, gives a vivid impression of how high feelings ran about these unwanted people:

If those who command the armed forces of our Nation say that it is necessary to remove any persons from the Pacific coast and call upon Colorado to do her part in this war by furnishing temporary quarters for those individuals, we stand ready to carry out that order. If any enemy aliens must be transferred as a war measure, then we of Colorado are big enough and patriotic enough to do our duty. We announce to the world that 1,118,000 red-blooded citizens of this State are able to take care of 3,500 or any number of enemies, if that be the task which is allotted to us. . . .

The people of Colorado are giving their sons, are offering their possessions, are surrendering their rights and privileges to the end that this war may be fought to victory and permanent peace. If it is our duty to receive disloyal persons, we shall welcome the performance of that task.

This statement must not be construed as an invitation, however. Only because the needs of our Nation dictate it, do we even consider such an arrangement. In making the transfers, we can feel assured



that governmental agencies will take every precaution to protect our people, our defense projects, and our property from the same menace which demands their removal from those sections.<sup>35</sup>

The government was also beginning to realize the hardship which the "voluntary" program brought upon evacuees. For instance, Secretary Knox forwarded to the Attorney General a report that the situation of the Japanese in southern California was critical because they were being forced to move with no provision for housing or means of livelihood.<sup>36</sup> McCloy, still in favor of the voluntary program, wrote Harry Hopkins at the White House that "[o]ne of the drawbacks they have is the loss of their property. A number of forced sales are taking place and, until the last minute, they hate to leave their land or their shop."<sup>37</sup>

Inevitably, the "voluntary" evacuation failed. The Army recognized this in Public Proclamation No. 4 on March 27, which prohibited persons of Japanese ancestry in Military Area No. 1 from changing their residence without instruction or approval from the Army. The Western Defense Command explained that the Proclamation was "to ensure an orderly, supervised, and thoroughly controlled evacuation with adequate provision for the protection . . . of the evacuees as well as their property." The evacuees were to be shielded from intense public hostility by this approach.<sup>38</sup> Full government control had arrived.

The change-of-address cards required by Public Proclamation No. 1 show the number of people who voluntarily relocated before March 29. In the three weeks following March 2, only 2,005 reported moving out of Military Area No. 1; since approximately 107,500 persons of Japanese descent lived there, these statistics alone showed that voluntary migration would not achieve evacuation. Public Proclamation No. 4 was issued on March 27 effective at midnight March 29. In the interval the Wartime Civil Control Administration received a rush of approximately 2,500 cards showing moves out of Military Areas No. 1 and 2.<sup>39</sup> The statistics in General DeWitt's *Final Report* are not altogether consistent: they show that from March 12 to June 30, 1942, 10,312 persons reported their "voluntary" intention to move out of Military Area No. 1. But a *net* total<sup>40</sup> of less than half that number—4,889—left the area as part of the "voluntary" program. Of these voluntary migrants, 1,963 went to Colorado; 1,519 to Utah; 305 to Idaho; 208 to eastern Washington; 115 to eastern Oregon; and the remainder to other states.<sup>41</sup> The *Final Report* surmises that this net total "probably



accounts for 90 percent of the total number of Japanese . . . who voluntarily left the West Coast area for inland points."<sup>42</sup>

While the voluntary program was failing, government officials and others began to propose programs designed for the evacuees. On February 20, 1942, Carey McWilliams, then a California state official and later editor of *The Nation*, sent a telegram to Biddle recommending that the President establish an Alien Control Authority run by representatives of federal agencies. The agency would register, license, settle, maintain and reemploy the evacuees, and conserve alien property. Ennis forwarded the suggestion to McCloy, who thought it had merit.<sup>43</sup> During the first week of March 1942, the Commissioner of Indian Affairs in the Interior Department, John Collier, proposed what he considered to be a constructive program for the evacuees, including useful work, education, health care and other services to be provided to them, as well as a plan for rehabilitation after the war. Collier said that the Department of the Interior would be interested in working on such a program if it were a meaningful one.<sup>44</sup> The Tolan Committee filed an interim report which showed great prescience about future problems and considerable concern for the fate of the evacuees.<sup>45</sup>

Whatever their individual merit, these proposals reflect genuinely sympathetic interest in the evacuees. Unfortunately, much of the thought and care that went into these programs was lost in the rush to evacuate and relocate.

## MANDATORY EVACUATION

Once the decision was made that evacuation was no longer voluntary, a plan for compulsory evacuation was needed.\* The core of this plan

\*There is a continuing controversy over whether the Census Bureau breached the confidentiality of census information in order to aid other government agencies in locating ethnic Japanese. John Toland, in his recent book *Infamy: Pearl Harbor and Its Aftermath* (Garden City, NY: Doubleday & Co., Inc., 1982), pp. 269, 284-85, recounts an episode on November 26, 1941, in which Henry Field, an anthropologist working as an aide to President Roosevelt, was called to the office of Grace Tully, Roosevelt's secretary:

She told Field that the President was ordering him to produce, in the shortest time possible, the full names and addresses of each American-born and foreign-born Japanese listed by locality within each state. Field



was that evacuation and relocation could not be accomplished simultaneously.<sup>46</sup> Therefore, sites had to be found for both temporary quarters and longer-term settlement.

During the period of the voluntary evacuation program, the Army had begun a search for appropriate camp facilities, both temporary and permanent.<sup>47</sup> Regarding the criteria for selection of assembly centers, General DeWitt later wrote:

Assembly Center site selection was a task of relative simplicity. As time was of the essence, it will be apparent that the choice was limited by four rather fundamental requirements which virtually pointed out the selections ultimately made. First, it was necessary to find places with some adaptable pre-existing facilities suitable for the establishment of shelter, and the many needed

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was completely bewildered and didn't know how to begin. She explained it was to be done by using the 1930 and 1940 censuses.

Within one week, Field is said to have delivered to Grace Tully the names and addresses of all the ethnic Japanese in the United States.

Calvert Dedrick, a Census Bureau employee who became a consultant to the Western Defense Command in late February 1942, testified to the Commission that to his knowledge the Census Bureau provided the Western Defense Command with detailed tabulations of the location of the ethnic Japanese population but did not provide the names or addresses of individuals. (Testimony, Dedrick, Washington, DC, Nov. 3, 1981, pp. 170-90.) The Census Bureau undertook an internal investigation after the publication of Toland's book and concluded that the account to Toland was not accurate and that names and addresses had not been released. (Bureau of the Census "Statement on Census Bureau Actions at the Outset of World War II as Reported in *Infamy: Pearl Harbor and Its Aftermath*, by John Toland," Oct. 1982 [CWRIC 2929-34].) A brief statement by the Census Bureau of its activities in connection with the evacuation, written in 1946, also states that names and individual identifications were not provided to the Western Defense Command. (Roger Daniels, "The Bureau of the Census and the Relocation of the Japanese Americans: A Note and a Document," *Amerasia Journal*, vol. 9, no. 1, 1982, pp. 101-05.) In his interview for the Earl Warren Oral History Project, Tom Clark mentioned the Census Bureau data in passing:

The Census Bureau moved out its raw files. . . . They would lay out on tables various city blocks where the Japanese lived and they would tell me how many were living in each block. (Earl Warren Oral History Project, *Japanese American Relocation Reviewed*, vol. 1, Interview of Tom C. Clark, p. 9.)

There is no direct evidence or testimony to the effect that the Western Defense Command was in possession of the names and addresses of individual ethnic Japanese, as collected by the Census Bureau, at the time that mandatory evacuation was carried out, but Field's story raises questions.



community services. Second, power, light, and water had to be within immediate availability as there was no time for a long pre-development period. Third, the distance from the Center of the main elements of evacuee population served had to be short, the connecting road and rail net good, and the potential capacity sufficient to accept the adjacent evacuee group. Finally, it was essential that there be some area within the enclosure for recreation and allied activities as the necessary confinement would otherwise have been completely demoralizing. The sudden expansion of our military and naval establishments further limited the choice.<sup>48</sup>

Site selection did not proceed perfectly smoothly, however. After Owens Valley in California was selected as a center, Congressman Ford of California, who had been prominent in urging the evacuation, objected. In a conversation with Gullion, DeWitt discussed Ford's objection: "Well, they are going to Owens Valley, and that's all. I don't care anything about the howl of these Congressmen or anybody else."<sup>49</sup> The attitude was typical of DeWitt who, given authority, did not hesitate to use it; but Ford continued to press his position, meeting with Justice Department officials and planning to meet with Bendetsen and possibly others.<sup>50</sup> He was not successful, since Stimson stood behind DeWitt, but it gave fair warning that many interested politicians who had pushed to establish the evacuation program and exclude the Nikkei from the West Coast retained a vital interest. As the months went by the War Department in Washington was to learn what DeWitt may have known all along: exclusion fulfilled the program of powerful organized interests in California, and no part of it would be given up without a fight.

In March work began at the first two permanent relocation centers, Manzanar in the Owens River Valley and the Northern Colorado Indian Reservation in Arizona; the sites served as both assembly and relocation centers.<sup>51</sup> The other assembly centers were selected with dispatch. The *Final Report* explains:

After an intensive survey the selections were made. Except at Portland, Oregon, Pinedale and Sacramento, California and Mayer, Arizona, large fairgrounds or racetracks were selected. As the Arizona requirements were small, an abandoned Civilian Conservation Corps camp at Mayer was employed. In Portland the Pacific International Live Stock Exposition facilities were adapted to the purpose. At Pinedale the place chosen made use of the facilities remaining on a former mill site where mill employees had previously resided. At Sacramento an area was employed where a migrant camp had once operated and advantage was taken of nearby utilities.<sup>52</sup>



A major step toward systematizing evacuation at this time was the establishment of the War Relocation Authority (WRA), a civilian agency, to supervise the evacuees after they left Army assembly centers. The War Department was eager to be out of the resettlement business, and discussed with the Attorney General and the Budget Bureau the mechanism for setting up a permanent organization to take over the job. Milton Eisenhower, a candidate fully acceptable to the War Department, was chosen to head the agency; McCloy took him to San Francisco to meet DeWitt before the Executive Order setting up the WRA was promulgated.<sup>53</sup> By March 17, plans for the independent authority responsible for the Japanese Americans were completed; the next day Roosevelt signed Executive Order 9102 to establish the War Relocation Authority,<sup>54</sup> appointed Eisenhower Director,<sup>55</sup> and allocated \$5,500,000 for the WRA.<sup>56</sup>

WRA was established "to provide for the removal from designated areas of persons whose removal is necessary in the interest of national security. . . ." The Director was given wide discretion; the Executive Order did not expressly provide for relocation camps, and it gave the Director authority to "[p]rovide, insofar as feasible and desirable, for the employment of such persons at useful work in industry, commerce, agriculture, on public projects, prescribe the terms and conditions of such public employment, and safeguard the public interest in the private employment of such persons."<sup>57</sup> In short, the WRA's job would be to take over the supervision of the evacuees from the Army's assembly centers. With that final destination put in the hands of a civilian agency, the Army was ready to push firmly ahead with its part of the evacuation.

Once Public Proclamation No. 4 took effect on March 29, and persons of Japanese ancestry were barred from moving out of Military Area No. 1, systematic mandatory evacuation began. Both the evacuation and the operation of the assembly centers were under the authority of the Army, by agreement with the War Relocation Authority. Evacuation was under military supervision. The centers themselves were operated by the Wartime Civil Control Administration (WCCA), the civilian branch of the Western Defense Command. Ninety-nine geographic exclusion areas were established in Military Area No. 1; an additional nine were specified later. The California portion of Military Area No. 2 was declared a prohibited area in June.<sup>58</sup> Areas regarded as militarily sensitive were evacuated first. The order of evacuation was kept secret "so that the information would not reach any affected person within the area." Once announced, each evacuation



plan gave seven days from the date of posting the order until the movement of evacuees.<sup>59</sup>

The small-scale evacuation of Terminal Island was a precursor of the mass evacuation of the West Coast and provides a vivid impression of the hardship brought by evacuation. Roughly six miles long and a half-mile wide, Terminal Island marks the boundaries of Los Angeles Harbor and the Cerritos Channel. Lying directly across the harbor from San Pedro, the island was reached in 1941 by ferry or a small drawbridge.

The Japanese community on the island was isolated, primarily occupied in fishing and canning. A half-dozen canneries, each with its own employee housing, were located on the island.<sup>60</sup> In 1942 the Japanese population of Terminal Island was approximately 3,500, of whom half were American-born.<sup>61</sup> Most of the businesses which served the island were owned or operated by Issei or Nisei. The island economy supported restaurants, groceries, barbershops, beauty shops and poolhalls in addition to three physicians and two dentists.<sup>62</sup>

On February 10, 1942, the Department of Justice posted a warning that all Japanese aliens had to leave the island by the following Monday. The next day, a Presidential order placed Terminal Island under the jurisdiction of the Navy. By the 15th, Secretary of the Navy Knox had directed that the Terminal Island residents be notified that their dwellings would be condemned, effective in about 30 days.<sup>63</sup> Even this pace was too slow: on February 25 the Navy informed the Terminal Islanders that they had 48 hours to leave the island. Many were unprepared for such a precipitous move.

The FBI had previously removed individuals who were considered dangerous aliens on December 7, 1941, and followed this by "daily dawn raids . . . removing several hundred more aliens."<sup>64</sup> As a consequence, the heads of many families were gone and mainly older women and minor children were left.<sup>65</sup> With the new edict, these women and children, who were unaccustomed to handling business transactions, were forced to make quick financial decisions. With little time or experience, there was no opportunity to effect a reasonable disposition.

Dr. Yoshihiko Fujikawa, a resident of Terminal Island, described the scene prior to evacuation:

It was during these 48 hours that I witnessed unscrupulous vultures in the form of human beings taking advantage of bewildered housewives whose husbands had been rounded up by the F.B.I. within 48 hours after Pearl Harbor. They were offered pittances



for practically new furniture and appliances: refrigerators, radio consoles, etc., as well as cars, and many were falling prey to these people.<sup>66</sup>

The day after evacuation, Terminal Island was littered with abandoned household goods and equipment.<sup>67</sup> Henry Murakami's loss was typical. He had become a fisherman after graduating from high school. After gaining experience he leased a boat from Van Camp Seafood Company and went out on his own, saving money to increase and to improve his equipment:

By the time World War II had started, I was now the owner of 3 sets of purse seine nets. These nets were hard to get and the approximate costs of these nets in 1941 were:

set of nets for Tuna	\$10,000
set of nets for Mackerel	\$7,500
set of nets for Sardines	\$5,000

When Pearl Harbor was attacked we were stopped from going out to fish and told to remain in our fishing camp.<sup>68</sup>

In early February, along with every alien male on Terminal Island who held a fisherman's license, Murakami was arrested and sent to Bismarck, North Dakota. His equipment lay abandoned, accessible for the taking.

The first exclusion order under the Army program was issued for Bainbridge Island near Seattle in Puget Sound, an area the Navy regarded as highly sensitive. It is illustrative of the Army's evacuation process. The order was issued on March 24, 1942, for an evacuation a week later<sup>69</sup> that was carried out under the direction of Bendetsen, who had been promoted to colonel and put in charge of the evacuation by DeWitt as head of the WCCA, which operated in conjunction with other federal agencies.<sup>70</sup>

Tom G. Rathbone, field supervisor for the U.S. Employment Service, filed a report after the Bainbridge Island evacuation, with suggestions for improvement which give a clear picture of the government's approach. A meeting to outline evacuation procedures was called on March 23; representatives of a number of federal agencies were present. After setting up offices on the island, the government group "reported to Center at 8:00 a.m. . . . for the purpose of conducting a complete registration of the forty-five families of persons of Japanese ancestry who were residents of the Island." Rathbone suggested that more complete instructions from Army authorities would clarify many problems, including what articles could be taken, climate at the assembly centers and timing of evacuation. He also suggested better planning so that the evacuees would not be required to return re-



peatedly to the center: "such planning would have to contemplate the ability to answer the type of question [sic] which occur and the ability to give accurate and definite information which would enable the evacuee to close out his business and be prepared to report at the designated point with necessary baggage, etc." Further, Rathbone noted that disposition of evacuees' property following relocation caused the most serious hardship and prompted the most questions. He reported:

We received tentative information late Friday afternoon to the effect that it was presumed that the Government would pay the transportation costs of such personal belongings and equipment to the point of relocation upon proper notice. When this word was given to the evacuees, many complained bitterly because they had not been given such information prior to that time and had, therefore, sold, at considerable loss, many such properties which they would have retained had they known that it would be shipped to them upon relocation. Saturday morning we receive additional word through the Federal Reserve Bank that the question had not been answered and that probably no such transportation costs would be paid. Between the time on Friday afternoon and Saturday morning some Japanese had arranged to repossess belongings which they had already sold and were in a greater turmoil than ever upon getting the latter information. To my knowledge, there still is no answer to this question, but it should be definitely decided before the next evacuation is attempted.<sup>71</sup>

After the Bainbridge evacuation, exclusion orders were issued for each of the other 98 exclusion areas in Military Area No. 1 and areas "were evacuated in the order indicated by the Civilian Exclusion Order number with but a few exceptions."<sup>72</sup> (A typical order, with map and instructions attached, appears after page 111.)

Later evacuations were better organized, but difficulties persisted. The handling of evacuee property presented a major problem for the government; one to which considerable, only partially successful effort was addressed. Congressman Tolan had sent a telegram to Attorney General Biddle on February 28, first urging the appointment of an Alien Property Custodian at the same time as an evacuation order was issued and the appointment of a coordinator for other enemy alien problems; Tolan did not address the problems of property protection or relocation assistance for citizens.<sup>73</sup> When McCloy informed Harry Hopkins of evacuees' property problems, he asked that a property custodian be appointed.<sup>74</sup> Hopkins replied that aliens' property could already be protected through the Treasury Department; as to the property of citizens, if McCloy would draw up documents for the President to sign, Hopkins thought a custodian for citizens' property was a good



idea.<sup>75</sup> The War Department drew up the papers,<sup>76</sup> but the custodial plan did not go through; instead the Treasury Department directed the Federal Reserve Board to assist evacuees in disposing of their property—"not a custodianship matter at all but a sort of free banking service."<sup>77</sup> For years to come, problems of property disposal and protection continued to haunt the evacuees and the federal government.

A minor but illuminating problem occurred when the Navy language school, which had Japanese personnel, realized it would have to relocate from Monterey to a place inland. The Navy was not pleased, but DeWitt prevailed once more, showing that he would enforce his authority to the letter without regard to the consequences for other government agencies or services.<sup>78</sup> There were no cases that merited making exceptions.

On May 23, 1942, Bendetsen spoke to the Commonwealth Club of San Francisco and reported that evacuation would be nearly completed by the end of May.<sup>79</sup> By June 6, all Japanese Americans had been evacuated from Military Area No. 1 to the assembly centers.<sup>80</sup> On June 8, 1942, DeWitt issued Public Proclamation No. 7, which provided "should there be any areas remaining in Military Area No. 1 from which Japanese have not been excluded, the exclusion of all Japanese from these areas is provided for in this proclamation."<sup>81</sup> By that proclamation, any ethnic Japanese remaining in the area and not exempt were ordered to report in person to the nearest assembly center.

In early June, the next stage of the evacuation occurred when, by Public Proclamation No. 6, DeWitt ordered the exclusion of Japanese aliens and American citizens of Japanese ancestry from the California portion of Military Area No. 2 on the grounds of military necessity.<sup>82</sup> Earlier the voluntary evacuees had been encouraged to move inland with no suggestion that Military Area No. 2 in California or any other state would be cleared of ethnic Japanese.<sup>83</sup> Indeed, in late April, Bendetsen was still resisting the politicians and agricultural interests who were pushing for expansion of the exclusion zone beyond Military Area No. 1.<sup>84</sup> The exclusion from the California portion of Military Area No. 2 appears to have been decided without any additional evidence of threat or danger in the area. The *Final Report* lamely explains this change:

Military Area No. 2 in California was evacuated because (1) geographically and strategically the eastern boundary of the State of California approximates the easterly limit of Military Area No. 1 in Washington and Oregon . . . and because (2) the natural forests



FIGURE A: An Exclusion Order

**Headquarters  
Western Defense Command  
and Fourth Army  
Presidio of San Francisco, California  
April 30, 1942**

## **Civilian Exclusion Order No. 27**

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this Headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that from and after 12 o'clock noon, P.W.T., of Thursday, May 7, 1942, all persons of Japanese ancestry, both alien and non-alien, be excluded from that portion of Military Area No. 1 described as follows:

All of that portion of the County of Alameda, State of California, within that boundary beginning at the point at which the southerly limits of the City of Berkeley meet San Francisco Bay; thence easterly and following the southerly limits of said city to College Avenue; thence southerly on College Avenue to Broadway; thence southerly on Broadway to the southerly limits of the City of Oakland; thence following the limits of said city westerly and northerly, and following the shoreline of San Francisco Bay to the point of beginning.

2. A responsible member of each family, and each individual living alone, in the above described area will report between the hours of 8:00 A. M. and 5:00 P. M., Friday, May 1, 1942, or during the same hours on Saturday, May 2, 1942, to the Civil Control Station located at:

530 Eighteenth Street  
Oakland, California.

3. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto or who is found in the above area after 12 o'clock noon, P.W.T., of Thursday, May 7, 1942, will be liable to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942 entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving, or Committing any Act in Military Areas or Zones," and alien Japanese will be subject to immediate apprehension and internment.

4. All persons within the bounds of an established Assembly Center pursuant to instructions from this Headquarters are excepted from the provisions of this order while those persons are in such Assembly Center.

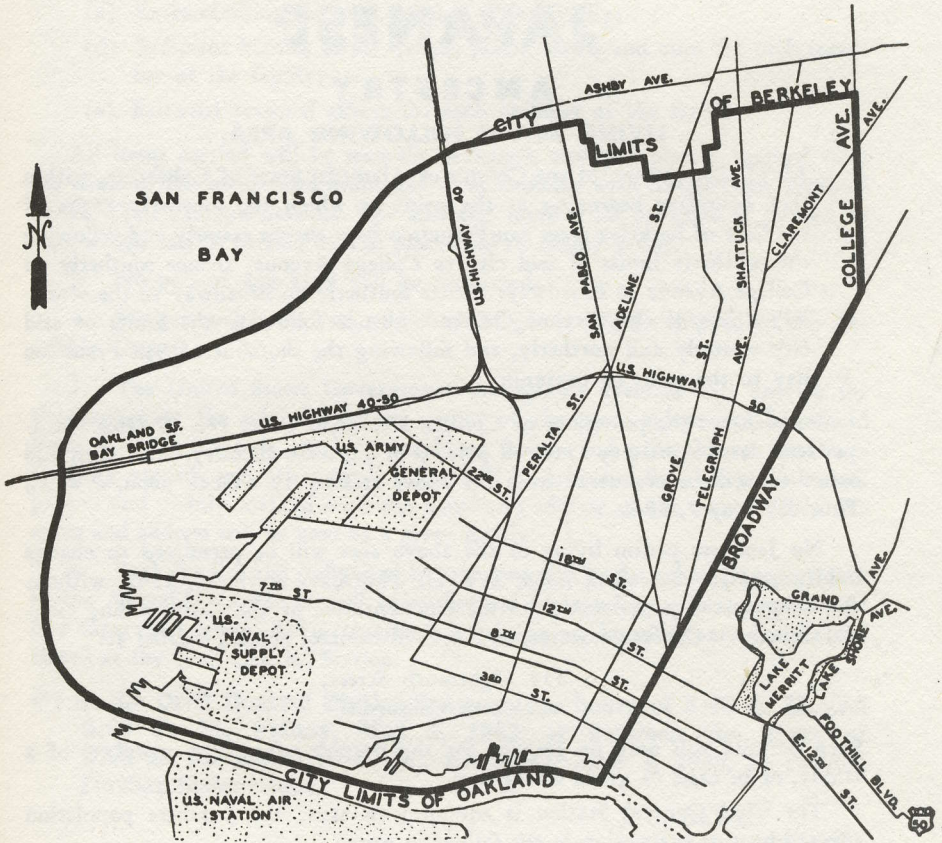
J. L. DEWITT  
Lieutenant General, U. S. Army  
Commanding

Source: J. L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (1943), p. 97.



FIGURE B: Map of a Prohibited Area

**PROHIBITED AREA**  
**EXCLUSION ORDER NO. 27**  
**Western Defense Command and Fourth Army**



C. E. Order 27

**This Map is prepared for the convenience of the public; see the Civilian Exclusion Order for the full and correct description.**

Source: J. L. DeWitt, *Final Report: Japanese Evacuation from the West Coast*, 1942 (1943), p. 98.



FIGURE C: Instructions to Evacuees

**WESTERN DEFENSE COMMAND AND FOURTH ARMY  
WARTIME CIVIL CONTROL ADMINISTRATION**

**Presidio of San Francisco, California**

**INSTRUCTIONS  
TO ALL PERSONS OF  
JAPANESE  
ANCESTRY**

**LIVING IN THE FOLLOWING AREA:**

All of that portion of the County of Alameda, State of California, within that boundary beginning at the point at which the southerly limits of the City of Berkeley meet San Francisco Bay; thence easterly and following the southerly limits of said city to College Avenue; thence southerly on College Avenue to Broadway; thence southerly on Broadway to the southerly limits of the City of Oakland; thence following the limits of said city westerly and northerly, and following the shoreline of San Francisco Bay to the point of beginning.

Pursuant to the provisions of Civilian Exclusion Order No. 27, this Headquarters, dated April 30, 1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P.W.T., Thursday May 7, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P.W.T., Thursday, April 30, 1942, without obtaining special permission from the representative of the Commanding General, Northern California Sector, at the Civil Control Station located at:

530 Eighteenth Street,  
Oakland, California.

Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.



## **THE FOLLOWING INSTRUCTIONS MUST BE OBSERVED:**

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 A. M. and 5:00 P. M. on Friday, May 1, 1942, or between 8:00 A. M. and 5:00 P. M. on Saturday, May 2, 1942.

2. Evacuees must carry with them on departure for the Assembly Center, the following property:

- (a) Bedding and linens (no mattress) for each member of the family;
- (b) Toilet articles for each member of the family;
- (c) Extra clothing for each member of the family;
- (d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;
- (e) Essential personal effects for each member of the family.

All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.

3. No pets of any kind will be permitted.

4. No personal items and no household goods will be shipped to the Assembly Center.

5. The United States Government through its agencies will provide for the storage at the sole risk of the owner of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.

6. Each family, and individual living alone will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

**Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Friday, May 1, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Saturday, May 2, 1942, to receive further instructions.**

J. L. DEWITT  
Lieutenant General, U. S. Army  
Commanding

April 30, 1942

See Civilian Exclusion Order No. 27.

Source: J. L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (1943), pp. 99-100.



and mountain barriers, from which it was determined to exclude all Japanese, lie in Military Area No. 2 in California, although these lie in Military Area No. 1 of Washington and Oregon.<sup>85</sup>

It is hard to believe that this is a candid analysis of the decision. The eastern boundary of California lies more than 100 miles east of Military Area No. 1 at the Oregon border. If there had been a general decision to exclude the ethnic Japanese from forests and mountains, why had they been allowed to resettle in Military Area No. 2? Morton Grodzins carefully analyzed this second exclusion decision and made a persuasive case that it was another example of the Western Defense Command adopting an utterly unsound military rationale to carry out the program of politicians, agriculturalists and agitators in eastern California who were intent on removing all ethnic Japanese from the state.<sup>86</sup>

Whatever the motivation, there were two obvious results: the "voluntary" evacuees who had resettled in eastern California were uprooted a second time, and, by August 18, 1942, everyone of Japanese descent had been expelled from the entire state of California except for those under guard at the Tule Lake and Manzanar camps and a small handful under constant supervision in hospitals and prisons.<sup>87</sup> California's anti-Japanese faction had triumphed.

## PUBLIC OPINION AND PROTEST

From March 28 to April 7, as the program evolved from voluntary to mandatory evacuation, the Office of Facts and Figures in the Office for Emergency Management polled public opinion about aliens in the population. Germans were considered the most dangerous alien group in the United States by 46 percent of those interviewed; the Japanese, by 35 percent. There was virtual consensus that the government had done the right thing in moving Japanese aliens away from the coast; 59 percent of the interviewees also favored moving American citizens of Japanese ancestry. The answers reflected clear educational and geographic differences. Relatively uneducated respondents were more likely to consider the Japanese the most dangerous alien group, and they were also disposed to advocate harsher treatment of the Japanese who were moved away from the coast. The east considered the Germans most dangerous, the west the Japanese. People in the south, in particular, were prone to treat Japanese harshly. The Pacific Coast



public led all other regions in believing the evacuees should be paid less than prevailing wages.<sup>88</sup>

Despite the strong endorsement of public opinion, protest against the mass evacuation continued through a small but steady stream of letters and public statements and through litigation which contested the enforcement of the curfew and exclusion orders.

Protest was most common among church figures and academics. The Federal Council of Churches and the Home Missions Council had already made known their views that the evacuation of American citizens of Japanese ancestry was wasting a national resource.<sup>89</sup> Mrs. Roosevelt sent along to McCloy the objections of Virginia Swanson, a Baptist missionary.<sup>90</sup> Eric C. Bellquist, a professor of political science at Berkeley, presented to the Tolan Committee a lengthy and remarkably well-informed analysis which forcefully dissented from the policy of exclusion and evacuation.<sup>91</sup> A few days later, Monroe Deutsch, Provost of the University of California, sent a telegram to Justice Felix Frankfurter protesting evacuation of people, including the Japanese, identified only as members of a group. To Deutsch this struck "an unprecedented blow at all our American principles."<sup>92</sup> He did not receive any support in that quarter; an exchange between Frankfurter and McCloy concluded with the Justice assuring the Assistant Secretary that he was handling a delicate matter with both wisdom and appropriate hard-headedness.<sup>93</sup>

The second stream of protest came through court challenges to the curfew and evacuation. Although the Japanese American Citizens League firmly opposed test litigation,<sup>94</sup> several individuals either brought lawsuits challenging the government's actions or failed to obey requirements, thereby challenging the legality of curfew and evacuation.

On April 13, 1942, Mary Ventura, an American citizen of Japanese ancestry married to a Filipino, filed a habeas corpus petition in the federal district court in the State of Washington to challenge the curfew and other restrictions imposed on her. The court denied the petition on the ground that, because Mrs. Ventura had not violated the curfew and was not in custody, she was not entitled to the remedy of habeas corpus which provides release from custody. But, in addition, the judge discussed the reasons why he would be likely to deny her petition on the merits:

The question here should be viewed with common sense consideration of the situation that confronts this nation now—that confronts this coast today. These are critical days. To strain some technical right of petitioning wife to defeat the military needs in



this vital area during this extraordinary time could mean perhaps that the "constitution, laws, institutions" of this country to which her petition alleges she is "loyal and devoted" would be for a time destroyed here on Puget Sound by an invading army. . . .

The petitioners allege that the wife "has no dual citizenship," that she is in no "manner a citizen or subject of the Empire of Japan." But how many in this court room doubt that in Tokyo they consider all of Japanese ancestry though born in the United States to be citizens or subjects of the Japanese Imperial Government? How many here believe that if our enemies should manage to send a suicide squadron of parachutists to Puget Sound that the Enemy High Command would not hope for assistance from many such American-born Japanese?

I do not believe the Constitution of the United States is so unfitted for survival that it unyieldingly prevents the President and the Military, pursuant to law enacted by the Congress, from restricting the movement of civilians such as petitioner, regardless of how actually loyal they perhaps may be, in critical military areas desperately essential for national defense.

Aside from any rights involved it seems to me that if petitioner is as loyal and devoted as her petition avers she would be glad to conform to the precautions which Congress, the President, the armed forces, deem requisite to preserve the Constitution, laws and institutions for her and all Americans, born here or naturalized.<sup>95</sup>

Habeas petitions should have been a particularly attractive vehicle for testing the military orders, since the Nisei would not have to come into court under arrest in violation of the law as written, but even the great writ was no help in the crisis of 1942; obviously the War Department would not be put through a critical review of its decision by this judge.<sup>96</sup>

The Nisei received no greater measure of relief in the criminal test cases. Minoru Yasui was a member of the Oregon bar and reserve officer in the Army who was working for the Consulate General of Japan in Chicago at the time of Pearl Harbor. He immediately resigned his consular position and sought to go on active duty with the Army, which would not accept him. In March he decided to violate the curfew regulations in order to test their constitutionality and was indicted by a grand jury. Yasui moved to dismiss the indictment on the ground that the curfew order was unconstitutional as applied to American citizens. The district judge agreed, but found that Yasui by his work for the consulate had renounced his citizenship, and proceeded to convict him as an alien of violating the curfew order.<sup>97</sup> Although sat-



ified with the result, the Justice Department did not support this outlandish theory.

Gordon Hirabayashi, an American-born university student in Seattle who was a Quaker and conscientious objector to military service, declined to report to the WCCA evacuation center. Hirabayashi was arrested for violating the curfew and failing to report and was convicted on May 16, 1942.<sup>98</sup> His case and Yasui's were decided by the Supreme Court on June 21, 1943; the Court restored Yasui's citizenship, but upheld the convictions for violation of the curfew regulations.<sup>99</sup>

Other arrests resulted in convictions and sentences or in guilty pleas and suspended sentences conditional upon compliance with the curfew or evacuation orders.<sup>100</sup> Perhaps the clearest irony in the court challenges was that of Lincoln Kanai, a citizen who failed to leave San Francisco after the evacuation proclamation. While released following his arrest, Kanai left the area, then presented a habeas petition to the federal district court in Wisconsin. The judge held that he would not substitute his judgment for that of the generals regarding the proper extent of military areas. Kanai was brought back to San Francisco to stand trial; he pled guilty, and on August 27, 1942, was sentenced to six months' imprisonment.<sup>101</sup>

This was an extreme example of General DeWitt's unbending policy of making no exceptions to strict enforcement of the exclusion and evacuation in order to help the government's legal posture. Apart from his personal inclinations, DeWitt had been advised that "If we should consent to the exemption in [one] particular case, we have opened up the whole subject of the evacuation of citizen Japanese. We would be extremely unfair to those who have cooperated by voluntary movement and to those in similar circumstances, who have been evacuated to Santa Anita and Manzanar." He responded, "*No exemptions of Japanese.*"<sup>102</sup>

It was not until later in 1943, after the Supreme Court decisions in *Hirabayashi* and *Yasui*, that district courts critically examined claims of military necessity as the basis for exclusion. Two orders individually excluding Maximilian Ebel and Olga Schueller, naturalized American citizens of German descent, from the Eastern Defense Command were struck down by the courts.<sup>103</sup> In these cases the military was put to its proof as to both the military importance of the eastern seaboard and the threat posed by the excluded person. The evidence about the East Coast is probably on a par with what could have been produced on the West Coast:



The evidence introduced through officers of Military Intelligence showed that the Eastern Military Area since the beginning of hostilities and up to the present date is known as a "sensitive area" (an area in which are located large concentrations of war-time installations or activities and also an area in which observation can be made and information valuable to the enemy can readily be obtained); that the area is open to offensive action and maneuvers; that it is exposed to direct attack by air and because of the tremendous amount of war installations and utilities exposed to sabotage. The evidence further showed that the area covering less than 14% of the land area of the United States includes about 40% of the population and over 60% of all plants manufacturing tools. There is also contained in this area a major portion of war-time installations and naval activities. It is the seat of the federal government and installations of management over communications. There are vast freight movements of supplies and equipment passing over its transportation lines; ship movements of men and supplies with their convoys and naval activities are easily discernible in this area.<sup>104</sup>

The government's evidence was clearly focused on the persons to be excluded as it had never been in the Nisei cases. Ebel, for instance, had served in the German Army in World War I, was president of the Boston branch of the Kyffhaeuser Bund from at least 1939 to January 1942, when the group was disbanded. "This Bund was one of the foremost international German societies in America in its encouragement of the military spirit and keeping alive the love of Germany in the hearts of former German soldiers and civilians."<sup>105</sup>

The courts did not in any way dispute the legal standards established in *Hirabayashi*. Nevertheless, in testing whether, under the war powers, there was military danger on the East Coast in 1943 sufficient to justify depriving citizens of the right to live and conduct business where they chose, the courts concluded that they had to determine whether the degree of restriction bore a reasonable relation to the degree of danger. In both cases the restriction was found excessive and the exclusion order struck down.

Surely an impartial judge would have reached the same conclusion on the West Coast in 1942 had the military been put to its proof against Nisei with unquestionable records of loyalty to the United States. How could a conscientious objector like *Hirabayashi* seriously be considered a threat to the security of Seattle? But in the spring of 1942 on the West Coast, not even the courts of the United States were places of calm and dispassionate justice.